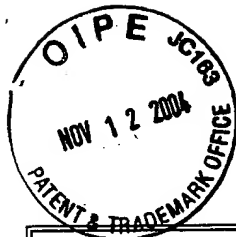


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Atty. Docket No. GOR05/P300A

CERTIFICATE OF MAILING

I hereby certify that this paper, together with all enclosures identified herein, are being deposited with the United States Postal Service as first class mail, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date indicated below.

November 8, 2004
Date


Petie Taylor

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Art Unit : 3611
Examiner : Brian K. Green
Applicant : Gigi C. Gordon
Appln. No. : 09/805,313
Filing Date : March 13, 2001
Confirmation No. : 1788
For : CLEANING ARTICLES

Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF (37 CFR §1.193)

This brief is in reply to the Examiner's Answer, filed in this case on September 8, 2004.

This reply brief is transmitted in triplicate.

The Examiner has stated that the claim language does not preclude the fact that the bath towels of *Carter et al.* are "capable of performing the function of being used to clean the surfaces mentioned." Examiner's Answer, p. 9. Yet in order for a claim to be anticipated under 35 U.S.C. §102, however, each and every element as set forth in the claim must be found in a single prior art reference. M.P.E.P. §2131 (emphasis added). The pending claims state that the cleaning article is "for cleaning a surface selected from the group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process, toilets, tubs, sinks,

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floors, walls, cars, boats, windows and tables." Therefore, the functional language in each claim, "for cleaning a surface selected from the group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables," even if functional, must be anticipated. *Carter et al.* fails to teach, or suggest, such use of bath towels shown therein.

Furthermore, such functional language in an apparatus claim requires that the reference possess the capability of performing the recited function. *R.A.C.C. Industries Inc. v. Stun-Tech Inc.*, 49 USPQ2d 1793 (Fed Cir. 1998) ("[I]n *Intel Corp. v. U.S. International Trade Commission*, 948 [sic, 946] F.2d 821, 832, 20 USPQ2d 1161, 1171 (Fed. Cir. 1991), this court interpreted functional language in an apparatus claim as requiring that an accused apparatus possess the capability of performing the recited function."). *Carter et al.* does not disclose or teach any article that is capable of cleaning a surface selected from the group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables. As anyone knows, the use of a bath towel for such purposes will ruin the bath towel and convert it to a rag. Yet *Carter et al.* does not disclose rags. It teaches designer bath towels for use on humans - "HIS." Consequently, *Carter et al.* neither anticipates nor renders obvious the pending claims. Accordingly, the claims are in condition for allowance.

The Examiner asserts that food borne cross-contamination issues are not addressed in the claims. Examiner's Answer, p. 9. Yet every claim includes "a surface selected from the group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process. . . ." It is difficult to understand how the claim could be more directed to the food preparation process, during which cross-contamination is always an issue.

The Examiner asserts that *Carter et al.* "can include the word HIS or the word HERS" in responding to the point that *Carter et al.* only discloses a single towel. Examiner's Answer,

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p. 10. Applicant's point, however, remains uncontroverted. *Carter et al.* only discloses a single towel.

The Examiner apparently concedes that the bath towel of *Carter et al.* is not for cleaning a surface selected from the group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables. Rather, the Examiner admits: "The His indicia on the one towel makes it clear that the towel is to be used by the man and the towel marked by the Her indicia is to be used by the women." Examiner's Answer, p. 10. Thus, it is "clear" that the towel of *Carter et al.* is used on humans, **NOT** dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables. Of course, the hypothetical second towel is **NOT** shown in the reference.

In continuing to assert the Scotch-Brite cookware sponge as invalidating art, the Examiner states that the "applicant fails to claim that the indicia is located directly on the pads." Examiner's Answer, p. 12. This is not true. Each claim states: "each of the cleaning articles including ... identifying indicia constituting a visually distinguishing external feature" (Claims 1 and 18), "each of the plurality of cleaning articles . . . including an identifying indicia constituting a visually distinguishing feature" (Claim 6), or "selecting for each of the plurality of articles a visually discernable indicia" (Claim 14). Indicia on the package, such as in the Scotch-Brite cookware sponge, does not meet this claim element. Thus, the packaging of the Scotch-Brite cookware sponge is completely irrelevant.

Conclusion

Applicant submits that the rejected claims are allowable under 35 U.S.C. §103, and are not obvious to those skilled in the art in light of the references cited by the Examiner. Specifically, Applicant submits that the Examiner has misapplied the prior art and has asserted features simply not present in the prior art. The references of record do not teach or in any way

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suggest the novel identification system having a plurality of cleaning articles, each bearing an indicia indicating a specific cleaning application differing from the other cleaning articles, thereby allowing ready identification and lower risk of cross-contamination.

In sum, think about the fact that almost every kitchen in America has multiple sponges on the kitchen counter or under the kitchen sink. When the cabinet is opened and a sponge is selected to wash the dishes, it would be very helpful to know that the same sponge was not used yesterday by another family member to clean the toilet. The Applicant's invention solves this problem. *Carter et al.* does not. The Scotch-Brite cookware sponge does not. No piece of prior art of record, either alone or properly combined, teaches the solution of the present invention. If the invention is so obvious, why has nearly 5000 years of civilized society not yet developed it? The best prior art the Examiner can find is a bath towel? The Examiner is simply incorrect in rejecting these claims, which should be deemed allowable.

Respectfully submitted,

GIGI C. GORDON

By: PRICE, HENEVELD, COOPER, DEWITT & LITTON, LLP

Dated:

Nov. 8, 2004



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